

The claimant filed an Application for Preliminary Hearing seeking an independent medical examination pursuant to K.S.A. 44-510e. The Administrative Law Judge denied the claimant's request due to claimant's refusal to stipulate that this is a functional only impairment case and that there is not a claim for work disability. The Administrative Law Judge found that K.S.A. 44-510e is applicable only to cases where the issue is functional impairment. The request was also denied on the basis that before an independent health care provider can be selected by the Administrative Law Judge there must be a genuine dispute between the parties. Here the Administrative Law Judge found there was no dispute as there is only one functional impairment rating. In so holding the Administrative Law Judge noted that evidence that is not unreasonable or not uncontradicted is deemed conclusive. He further found that there was nothing that would lead the trier of fact to conclude that the single available functional impairment rating was unreasonable or unreliable.

The issues for determination by the Appeals Board are:

- (1) Whether the Appeals Board has jurisdiction to hear this appeal;
- (2) Whether this is an appeal from a preliminary or a final order;
- (3) Whether the July 1, 1993, enactment of K.S.A. 44-510e is applicable to this claim since the accidental injury out of which this action arises occurred prior to July 1, 1993; and,
- (4) Whether claimant is entitled to a referral to a health care provider for an opinion regarding functional impairment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board, for purposes of this preliminary matter, finds that it does not have jurisdiction to review the issues raised before the Administrative Law Judge at this time. Therefore, the Order of the Administrative Law Judge remains in full force and effect.

The decision rendered by the Administrative Law Judge denying the claimant's request for an independent medical examination referral for purposes of obtaining a functional impairment rating pursuant to K.S.A. 44-510e is interlocutory in nature and subject to modification at any time prior to a final award being entered.

The Appeals Board finds, after examining both K.S.A. 44-551 and K.S.A. 44-534a, that the subject order is not a final order that can be reviewed by the Appeals Board pursuant to K.S.A. 44-551. Nor does K.S.A. 44-534a apply as that statute is limited to preliminary hearing matters pertaining to the issues of furnishing medical treatment and the payment of temporary total disability compensation. This Order now before us pertains to an interlocutory matter over which the Administrative Law Judge has the authority to adjudicate.

Although the matter came before the Administrative Law Judge pursuant to the claimant's filing a Form E-3 Application for Preliminary Hearing requesting medical treatment, the Appeals Board finds that the relief requested was not in the nature of medical treatment benefits as contemplated by K.S.A. 44-534a, but rather in the nature of an independent medical examination, specifically a rating examination. The jurisdiction of the Appeals Board to hear appeals from orders by Administrative Law Judges which are

preliminary or interlocutory in nature is limited to those issues specifically enumerated in K.S.A. 44-534a. As this is neither a final order nor one of the issues deemed jurisdictional by K.S.A. K.S.A. 44-551 and 44-534a, the Appeals Board does not have jurisdiction to review the issues raised at this time.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge George R. Robertson, dated February 21, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of August, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Mitchell D. Wulfekoetter, PO Box 1453, Topeka, KS 66601-1453
John W. Mize, PO Box 380, Salina, KS 67402-0380
Richard L. Friedeman, PO Box 1110, Great Bend, KS 67530
George R. Robertson, Administrative Law Judge
George Gomez, Director